IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.119 and 120 of 2007

The Commissioner of Income-tax,
Chennai. .. /Appellant/Appellant

Vs

South India Corporation (Agencies) Limited,
36-40, Armenian Street,
Chennai-600 001. .. /Respondent Respondent

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 25.11.2005 made in I.T.A.Nos. 692/Mds/2000 and 885/Mds/2000 for the assessment year 1994-95. against the order of the Commissioner of Income-TAx (Appellate) Chennai 600 024 dated 18.02.2000 and made in ITA NO. 82/97-98 against the order of the Assistant Commissioner of Income Tax Central Circle - I (5) Madras - 600 034 dated 21.03.1997 and made in PAN/GIR NO./ 47-004-CY-6956

For Appellant : Mr.J.Narayanaswamy Standing Counsel for IT

JUDGMENT
(Delivered by P.D.DINAKARAN,J.)

The present appeals are directed against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 25.11.2005 made in I.T.A.Nos. 692/Mds/2000 and 885/Mds/2000 for the assessment year 1994-95, raising the following common substantial questions of law:

1.Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of receivable interest on amounts advanced to the subsidiary company M/s.Pearl Ships Ltd., without interest?
2.Whether in the facts and circumstances of the case, the

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Tribunal was right in holding that the payment of incentives to Dock Labour Board workers had to be allowed as a deduction?

3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that inclusion of interest from Sundaram Industries for the amounts advanced by the assessee had to be deleted?

4. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the 20% of the value of the tools that was written off even though the written off tools had a scrap value of 20%? and

5. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the disallowance made in respect of the interest/clearing and handling receipts, stevedoring receipts, agency fees, service charges that were brought to tax on the basis of accrual system even though the assessee was following mercantile system of accounting?

2.1. The Assessing Officer, while completing the assessment for the assessment years 1994-95 made additions on account of receivable interest on amounts advanced to the subsidiary company M/s.Pearl Ships Ltd., without interest; (ii) disallowed the 50% of claimed deduction of payment of incentives to dock labour board workers; (iii) inclusion of notional interest from Sundaram Industries as the assessee company had lent monies interest free; (iv) addition of 20% of the value of the tools that was written off as the written off tools had a scrap value of 20%; and (v) interest/clearing and handling receipts, stevedoring receipts, agency fees, service charges were brought to tax based in accrual system of accounting which is the system of the accounting followed by the assessee.

2.2. On appeal by the assessee, the Commissioner of Income Tax (Appeals) partly allowed the appeal and partly dismissed the appeal. Being aggrieved, the assessee as well as the Revenue preferred appeals before the Tribunal, which allowed the appeals in favour the assessee. Hence, the present appeals by the Revenue raising the questions of law referred to above.

3.1. The first substantial question of law raised is, whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of receivable interest on amounts advanced to the subsidiary company M/s.Pearl Ships Ltd., without interest?

3.2. The assessee company advanced amounts, free of interest, to its subsidiary company, M/s.Pearl Shipping Ltd.. The Assessing Officer found that the subsidiary company made substantial profits during the relevant assessment year and there is no reason for the

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assessee to advance interest free loans to its subsidiary company borrowing funds from market incurring heavy outlay on interest and accordingly disallowed 12% interest. The Commissioner of Income Tax (Appeals), on appeal, sustained the said disallowance.

3.3. The Tribunal, finding that the issue is covered in favour of the assessee by the order of the Tribunal in assessee's own case for the earlier assessment years, and moreover, there is nexus between the activities of the assessee and its subsidiaries, directed to delete the addition made by the authorities below and held in favour of the assessee.

3.4. In the instant case, the Tribunal, after careful analysis of the materials available on record found that no fresh loan was given by the assessee to its sister concern during the relevant assessment year and moreover, similar claim of allowance of interest paid on borrowings as interest referable to the advances given to subsidiary company was allowed during the earlier assessment years, and the same remains unchallenged till date. In our considered opinion, such finding given by the Tribunal based on valid materials, does not warrant interference.

4.1. The second question raised is, whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment of incentives to Dock Labour Board workers had to be allowed as a deduction?

4.2. The assessee paid incentives to Dock Labour Board workers in order to achieve maximum output, but 50% of the same was disallowed by the assessing officer finding that the payments were not fully vouched by the persons stated to have received the amounts.

4.3. The Commissioner of Income Tax (Appeals), referring to the conclusion arrived at by his predecessors for the earlier assessment year, held that nature of the payment is unverifiable and that the amounts expended in the earlier years, when compared to that claimed by the assessee during the assessment year in question, is not unjustifiably different and held the issue in favour of the assessee. The said view was, on appeal, confirmed by the Tribunal following assessee's own case for the earlier assessment years.

4.4. The first appellate authority as well as the Tribunal found that there is no breach of law in making payments which were essentially incidental to the carrying of the appellant's business with a view to earning profits, and such finding given by both the authorities, after wading through the materials available on record, in our considered opinion, needs no interference.

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5.1. The third question raised in this appeal is, whether in the facts and circumstances of the case, the Tribunal was right in holding that inclusion of interest from Sundaram Industries for the amounts advanced by the assessee had to be deleted?

5.2. The assessee had advanced an amount to M/s.Sundaram Industries. In the said advance, the assessee had not charged any interest. The Assessing Officer finding that for earlier assessment years interest @18% was disallowed on the sum advanced, disallowed the interest claim of the assessee. Against the disallowance, the assessee filed an appeal to the Commissioner of Income Tax (Appeals), who following earlier orders deleted the addition made by the Assessing Officer. On further appeal by the Revenue, the Tribunal allowed the assessee's claim.

5.3. Mr.Narayanaswamy, learned standing counsel for the Revenue fairly concedes that this issue is covered by the decision of this Court in assessee's own case, viz., judgment dated 31.8.2006 made in T.C.(A) Nos.262 to 267 of 2006 and 1231 to 1237 of 2006, in favour of the assessee. In the said decision, this Court, finding that the assessee has a lot of business action with the subsidiaries and carrying on various activities through the subsidiaries, that there is a factual finding that the assessee had its own free reserves and funds used mainly for running expenses, that there was no correlation made by the Revenue that the money borrowed was actually given to its subsidiaries, deleted the addition towards interest.

5.4. The said decision in assessee's own case, favouring the assessee, is applicable to the case on hand in all fours. Hence, this question of law raised needs no consideration.

6.1. The challenge raised in the fourth question is, whether in the facts and circumstances of the case, the Tribunal was right in deleting the 20% of the value of the tools that was written off even though the written off tools had a scrap value of 20%?

6.2. The assessee had debited a total expenditure of Rs.7,01,143/- as loose tools written off. The Assessing Officer, while permitting the write off in principle held that 20% of the value of the tools so written off was realisable as scrap value and disallowed the claim to that extent.

6.3. On appeal, the Commissioner of Income Tax (Appeals), observing that the assessee would bring such income from sale of scrap in to the profit and loss account as and when such scrap is sold, deleted the disallowance made by the Assessing Officer. The

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Tribunal, confirmed the order of the Commissioner of Income Tax (Appeals), following the earlier order of the Tribunal in assessee's own case, wherein it has been held that tools necessarily wear out consequent to use and become unusable.

6.4. The reasoning of the Commissioner of Income Tax (Appeals), which was confirmed by the Tribunal, was based on appreciation of the materials on record, which revealed that the assessee had not sold such tools and if and when such tools are sold, the same would be brought into the profit and loss account. Such finding, based on appreciation facts, in our considered opinion, warrants interference. Hence, this substantial question of law needs no consideration.

7.1. The last question raised for our consideration is, whether in the facts and circumstances of the case, the Tribunal was right in deleting the disallowance made in respect of the interest/clearing and handling receipts, stevedoring receipts, agency fees, service charges that were brought to tax on the basis of accrual system even though the assessee was following mercantile system of accounting?

7.2. The assessee company has been maintaining its books of accounts on mercantile system of accounting except for interest, clearing and handling receipts, steves receipts, agency fees and service charges, which were maintained on receipt basis. The Assessing Officer held that the accrual basis of accounting was to be compulsorily followed and accordingly, brought the income under various heads to tax on mercantile basis.

7.3. The Commissioner of Income Tax (Appeals), following its earlier order, wherein it was held that since the method of accounting regularly employed by the assessee for income tax purpose in respect of the subject sources was cash, there is no necessity to change over to mercantile system, deleted the addition made by the Assessing Officer and directed him to re-compute the income as per the method of accounting regularly employed by the assessee.

7.4. The Tribunal, following its earlier order in assessee's own case, upheld the order of the Commissioner of Income Tax (Appeals) deleting the addition made by the Assessing Officer.

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7.5. The Tribunal had consistently held the above issue in favour of the assessee and the Revenue had accepted the earlier order and the counsel for the Revenue not produced any material or evidence before us to take a different view. When a consistent view has been taken by the Tribunal, there is no error or infirmity in the order of the Tribunal and it does not require interference and hence no substantial question of law arises for consideration.

In the result, finding no substantial question of law arising for our consideration, these appeals are dismissed. No costs.
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Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "B", Rajaji Bhavan
Besant Nagar, Chennai 90

2.The Commissioner of Income
Tax (Appeals)-II, Chennai.

3. The Assistant Commissioner of Income-Tax
Income Tax, Circle -I(5) Chennai.

4. The Commissioner of Income-Tax,Chennai

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5.The Deputy Commissioner of
  Income Tax, Circle-I(5)
  Chennai.

+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 11537

NG(CO)
NM(20.03.07)

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